

SECTION H: SPECIAL CONTRACT REQUIREMENTS

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H-1 BUILDER'S RISK INSURANCE

The Contractor shall, from the start of vessel construction until preliminary acceptance by the government, provide and maintain in force a Builder's Risk Policy on behalf of the Government covering the vessel and all material and equipment for each vessel to be provided under ITEMS 0001 through 0007 and if exercised, ITEM 0008, 0015, or 0022 and their respective associated CLINs; provided, that for ITEM 0001 the cost of detail design shall be excluded from the insured value. The Contractor agrees that the price of this contract includes the price of the insurance required by this provision. A copy of the policy shall be provided to the Government by the Contractor, prior to and as a condition of the Government's issuance of a notice to proceed after contract award.

H-2 LIENS AND TITLE

(a) Any and all partial and progress payments made hereunder on account of the vessels and the materials and equipment therefor shall be secured, when made, by a lien in favor of the Government upon such material and equipment on account of all payments so made, except to the extent that the Government, by virtue of any other requirement of this contract, or otherwise, shall have valid title to such material and equipment as against other creditors of the Contractor. If such property is not identified by marking or segregating, the Government shall be deemed to have a lien upon a proportionate part of any mass of property with which such property is commingled. Any lien provided for by virtue of this requirement is paramount to all other liens under the provisions of 10 U.S.C. Sec 2307. Upon completion and delivery of the vessels, said lien shall be discharged as to any materials and equipment which have not been included in the vessels and which are no longer required therefor.

(b) The Contractor shall immediately discharge or cause to be discharged any lien or rights in rem of any kind, other than in favor of the Government, which at any time exists or rises with respect to the machinery, fittings, equipment or materials for the vessels. If any such lien or

right in rem is not immediately discharged, the Government may discharge or cause to be discharged said lien or right in rem at the expense of the Contractor.

(c) Title to the vessels under construction shall be in the Government and title to all materials and equipment acquired for each vessel shall vest in the Government upon delivery thereof to the plant of the Contractor or other place of storage selected by the Contractor, whichever of said events shall first occur; provided, that the CONREP may, by written direction, require that title shall vest in the Government upon delivery of such materials and equipment to the carrier for transportation to the plant of the Contractor or other place of storage selected by the Contractor. The amount of any freight charges, transportation, taxes or other costs which would have been paid by the Contractor, either directly or as an element of any subcontract cost, and which the Contractor shall not be required to pay as a result of such earlier vesting of title and any use of Government bills of lading, shall be determined and treated as though resulting from a change order and the contract price reduced accordingly. Upon completion of the vessels, or with the approval of the CONREP at any time during the construction of the vessels, all such materials and equipment which have not been included therein and which are agreed between the Contractor and the CONREP to be no longer required therefor, except materials and equipment which were furnished by the Government or the cost of which has been reimbursed by the Government to the Contractor, shall become the property of the Contractor; provided, however, that models, mockups, plans and other items which the Contractor is expressly required to construct, prepare, or furnish shall remain the property of the Government. Upon completion of the contract, or at such earlier date as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of property not consumed in the performance of this contract (including any resulting scrap) or not theretofore delivered to the Government, the cost of which has been reimbursed by the Government to the Contractor apart from the fixed price. The Contractor shall deliver or make such other disposal of such property as may be directed or authorized by the Contracting Officer. Recoverable scrap from such property shall be reported in accordance with such procedure and in such form as the Contracting Officer may direct. The net proceeds of any such disposal shall be credited to the Government and shall be paid in such manner as the Contracting Officer may direct. For the purpose of this requirement, "net proceeds" means actual amount collected from such sale of disposal less sales, collection fees and other reasonable related expenses.

H-3 NOTIFICATION OF CHANGES

(a) Definitions. As used in this requirement, the term "Contracting Officer" does not include any representative of the Contracting Officer whether or not such representative is acting within the scope of his authority nor does it include any other individuals or activities that in any way communicate with the Contractor. As used in this requirement, the term "conduct" includes both actions and failures to act, and includes the furnishing of, or the failure to furnish, any item under any provision of this contract.

(b) Notice. The primary purpose of this requirement is to obtain prompt reporting of any

conduct which the Contractor considers would constitute or would require a change to this contract. The parties acknowledge that proper administration of this contract requires that potential changes be identified and resolved as they arise. Therefore, except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Contracting Officer of any conduct which the Contractor considers would constitute or would require a change to this contract. Such notice shall be provided promptly, and in any event within thirty (30) calendar days from the date the Contractor identifies any such conduct. The Notice shall be written and shall state, on the basis of the most accurate information available to the Contractor:

- (i) The date, nature, and circumstances of the conduct regarded as a change;
- (ii) The name, function, and activity of the individuals directly involved in or knowledgeable about such conduct;
- (iii) The identification of any documents and the substance of any oral communication involved in such conduct;
- (iv) The particular elements of contract performance for which the Contractor might seek an equitable adjustment under this requirement, including:
 - (1) What ship(s) have been or might be affected by the potential change;
 - (2) To the extent practicable, labor or materials or both which have been or might be added, deleted, or wasted by the potential change;
 - (3) To the extent practicable, the Contractor's preliminary order of magnitude estimate of cost and schedule effect of the potential change; and
 - (4) What and in what manner are the particular technical requirements or contract requirements regarded as changed.

(c) Continued Performance. Except as provided in paragraph (f) below, following submission of notice, the Contractor shall take no action to implement a potential change until advised by the Contracting Officer in writing as provided in (d) below, unless the potential change was previously directed by the Contracting Officer, in which case the Contractor shall conform therewith. Nothing in this paragraph (c) shall excuse the Contractor from proceeding with contract work other than implementation of the potential change or from proceeding in accordance with directions issued by the Contracting Officer.

(d) Government Response. The Contracting Officer shall promptly, and in any event within twenty-one (21) calendar days after receipt of Notice, respond thereto in writing. In such response, the Contracting Officer shall either:

- (i) Confirm that the conduct of which the Contractor gave notice would constitute a

change, and when necessary, direct the mode of further performance, or;

(ii) Countermand any conduct regarded by the Contractor as a change, or;

(iii) Deny that the conduct of which the Contractor gave notice would constitute a change and, when necessary, direct the mode of further performance, or;

(iv) In the event the Contractor's notice information is inadequate to make a decision under (i), (ii) or (iii) above, advise the Contractor what additional information is required. Failure of the Government to respond within the time required above shall be deemed a countermand under (d)(ii).

(e) Equitable Adjustments. Equitable adjustments for changes confirmed or countermanded by the Contracting Officer shall be made in accordance with the clause of this contract entitled "CHANGES", or any other requirement of this contract which provides for an equitable adjustment.

(f) Special Procedures. Paragraph (c) provides that the Contractor is to take no action to implement a potential change pending the Contracting Officer's response to the Contractor's notice of the potential change, except where specifically directed by the Contracting Officer. In special situations, however, where

(1) The circumstances do not allow sufficient time to notify the Contracting Officer of the facts prior to the need to proceed with the work, and;

(2) The work must proceed to avoid hazards to personnel or property or to avoid additional cost to the Government, the Contractor may proceed with work in accordance with the potential change. In such special situations, the Contractor shall advise the Contracting Officer in writing within ten (10) days of the conduct giving rise to the potential change that the Contractor has proceeded and shall describe the nature of the special situation which required proceeding prior to notification. Within thirty (30) calendar days of the conduct giving rise to the potential change, the Contractor shall provide notice as required in (b) above. The Contracting Officer shall respond as set forth in (d) above. If the Contracting Officer determines that the conduct constitutes a change and countermands it, the Contractor shall be entitled to an equitable adjustment for performance in accordance with that change prior to the countermand including performance resulting from the countermand.

(g) When the Contractor identifies any conduct which may result in delay to delivery of the ship(s), the Contractor shall promptly so inform the Contracting Officer thereof prior to providing the notice required by paragraph (b) above.

H-4 OTHER CHANGE PROPOSALS

(a) The Contracting Officer, in addition to proposing engineering changes pursuant to other

requirements of this contract, and in addition to issuing changes pursuant to the clause of this contract entitled "CHANGES", may propose other changes within the general scope of this contract as set forth below. Within forty-five (45) days from the date of receipt of any such proposed change, or within such further time as the Contracting Officer may allow, the Contractor shall submit the proposed scope of work, plans and sketches, and its estimate of: (A) the cost, (B) the weight and moment effect, (C) effect on delivery dates of the vessel(s), and (D) status of work on the vessels affected by the proposed change. The proposed scope of work and estimate of cost shall be in such form and supported by such reasonably detailed information as the Contracting Officer may require. Within sixty (60) days from the date of receipt of the Contractor's estimate, the Contractor agrees to either (A) enter into a supplemental agreement covering the estimate as submitted, or (B) if the estimate as submitted is not satisfactory to the Contracting Officer, enter into negotiations in good faith leading to the execution of a bilateral supplemental agreement. In either case, the supplemental agreement shall cover an equitable adjustment in the contract price, including an equitable adjustment for the preparatory work set forth above, scope, and all other necessary equitable adjustments. The Contractor's estimate referred to in this subparagraph shall be a firm offer for sixty (60) days from and after the receipt thereof by the Contracting Officer having cognizance thereof, unless such period of time is extended by mutual consent.

(b) Pending execution of a bilateral agreement or the direction of the Contracting Officer pursuant to the "CHANGES" clause, the Contractor shall proceed diligently with contract performance without regard to the effect of any such proposed change.

(c) In the event that a change proposed by the Contracting Officer is not incorporated into the contract, the work done by the Contractor in preparing the estimate in accordance with subparagraph (a) above shall be treated as if ordered by the Contracting Officer under the "CHANGES" clause. The Contractor shall be entitled to an equitable adjustment in the contract price for the effort required under subparagraph (a), but the Contractor shall not be entitled to any adjustment in delivery date. Failure to agree to such equitable adjustment in the contract price shall be a dispute within the meaning of the clause of this contract entitled "DISPUTES" (FAR 52.233-1).

H-5 PROGRESS PAYMENTS (PERCENTAGE OF COMPLETION)

Progress payments on account of the Contract shall be made by the Contracting Officer to the Contractor as the Contract work progresses. All progress payments shall be subject to a retainage of five percent (5%). The amounts of such payments shall be determined by; (a) dividing the contract price for CLIN 0001 into a set amount of points (10,000), representing the total cost of the labor by SWBS element as presented in the Contractor's final price proposal, and measuring said progress by the percent of completion of said portions of the Contract work, as certified by the Contractor subject to the approval of the CONREP, and (b) dividing the contract price for CLIN 0001 material into a set amount of points(10,000) representing the total cost of material by SWBS element as presented in the Contractor's final price proposal, and measuring said progress by the amount of material paid for as shown by payment made by cash, check or

other forms of actual payment as certified by the Contractor subject to approval of the CONREP.

In addition to progress payments under Item 0001, the Contracting Officer will make payments to the Contractor for work completed by the Contractor under Items 0002 through 0007, if exercised or ordered, following certification of completion of the work by the Contractor subject to the approval of the CONREP. For work under CLINs 0002 through 0007 for which work is not yet complete, the Contractor must submit to the CONREP, within 15 days after each calendar quarter for approval, a revised 10000 point weighting of the CLIN 001 progressing system to include all labor and material costs exercised or ordered under CLINs 002 through 0007 from the previous calendar quarter. The revised weighting may, within a SWBS element, reallocate CLIN 0001 labor and material costs as determined to be necessary by the Contractor subject to the approval of the CONREP.

For each of Option Items 0008, 0015, and 0022, if exercised, separate 10,000 point progress measurement scales based on their respective costs of labor and materials will be utilized to determine progress as certified by the Contractor subject to the approval of the CONREP. Similarly, the Contracting Officer will make payments to the Contractor for work completed by the Contractor under Items 0009 through 00014, 0016 through 0021, and 0023 through 0028 if exercised or ordered, following certification of completion of the work by the Contractor subject to the approval of the CONREP. For work under Items 0009 through 00014, 0016 through 0021, and 0023 through 0028 for which work is not yet complete, the Contractor must submit to the CONREP, within 15 days after each calendar quarter for approval, a revised 10000 point weighting of the CLIN 0008, 0015 and 0022 progressing systems to include all labor and material costs exercised or ordered under CLINs 0009 through 0014, 0016 through 0021 and 0023 through 0028 from the previous calendar quarter. The revised weighting may, within a SWBS element, reallocate CLIN 0008, 0015 and 0022 labor and material costs as determined to be necessary by the Contractor subject to the approval of the CONREP.

Progress payments may be submitted at monthly intervals; provided, however, that the aggregate of such payments made prior to the delivery of the vessel(s) by the Contractor to the Government shall not be in excess of 95 percent of the contract price for CLIN 0001 and if exercised, 95 percent of the contract price for each of the Option items 0008, 0015 and 0022. Progress shall be determined by the percentage of Contract work completed and material delivered to the Contractor at its Shipyard and paid for as shown by payment made by cash, check or other form of actual payment, as certified by the Contractor subject to approval of the CONREP.

The Contractor agrees that it shall not allow liens, security interest or rights in rem of any kind arising out of the Contract work, or on account of any claim against the Contractor or against the subcontractor of the Contractor performing work or furnishing material under this Contract to lie or attach against the vessels or any of said property, material, or Contract work.

The amounts withheld under the provisions of this Section, plus any other amounts payable to the Contractor under the terms of this Contract shall be paid (except amounts withheld for liquidated damages and any offset required by law) as follows:

(i) All except 2 1/2 percent of the Contract price for CLIN 0001 through 0007 and if exercised, Option items 0008 through 0014 , 0015 through 0021 and 0022 through 0028 shall be payable promptly after the preliminary acceptance of the vessel(s).

(ii) The balance of the Contract price for CLIN 0001 through 0007 and if exercised, Option items 0008 through 0014 , 0015 through 0021 and 0022 through 0028 shall be paid within 30 days of the end of the Guarantee period(s), provided all contractual obligations have been satisfied.

No payments on account of the Contract price shall be made except on submitted bills, vouchers, or invoices which shall be in such number and form and shall be executed, certified, and attested in accordance with the clause in Section I of this contract entitled PROMPT PAYMENT (JUN 1997).

The Contractor shall maintain a file of all purchase orders issued and subcontracts entered into by the Contractor in the performance of the Contract work and shall furnish copies of such priced purchase orders and subcontracts to the Contracting Officer as may be required.

At any time or times prior to final payment under this contract, the Contracting Officer may have any invoices and statements or certifications of costs audited. The Contracting Officer may require the Contractor to submit, or make available for examination by the Contracting Officer or his designated representative, the supporting documentation upon which invoices, statements or certifications of costs are based. Each payment theretofore made shall be subject to reduction as necessary to reflect the exclusion of amounts included in the invoices or statements or certifications of costs which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable costs. Any payment may be reduced for over-payments, or increased for underpayment on preceding invoices.

H-6 AWARD FEE

(a) In addition to the prices specified in Section B for Item 0001, and if exercised, Items 0008, 0015, and 0022, the Contractor may earn award fee as determined by the Fee Determining Official (FDO). While not a traditional award fee, the Government's purpose in granting this incentive bonus is to encourage and reward superior Contractor effort toward performance of this contract by periodically reviewing the Contractor's effectiveness in (1) ensuring timely ship delivery, (2) management (including relationships with the Government, the SSVs and the Noise Control Engineering Firm), and (3) design/engineering, noise/vibration, weight control/stability, production, and logistics. It is recognized that the standards by which the Contractor's performance is to be gauged are not susceptible to precise definition; however, these are the general areas on which particular emphasis will be placed. These evaluation categories are presented in approximate descending order of importance. However, the Contracting Officer may from time to time modify the relative weights of the evaluation categories and modify the distribution of available award fee dollar amounts set forth in paragraph (g), provided that the

Contracting Officer notifies the Contractor prior to the beginning of each evaluation period for which the changes will be effective. These modifications shall not change the total available award fee potential provided by this clause nor change the award fee earned by the Contractor in any completed evaluation period.

(b) The Government, at its sole discretion, may decide to provide funds under Item 0001, and if exercised, Items 0008, 0015, and 0022 to be made available under this award fee provision. The amount of this funding, if any, will be determined by the Government after contract award and incorporated into the contract through a unilateral contract modification. The Government may increase or decrease the amount of the funding provided, if any, from time to time as necessary.

(c) The Contractor's performance evaluation for each period will be conducted by an Evaluation Board consisting of no less than four of the following members:

- (i) NOAA FRV-40 Acquisition Manager, Chairman;
- (ii) NOAA FRV-40 NMFS Deputy Program Manager;
- (iii) Contracting Officer (CO) or Representative;
- (iv) Senior NOAA On-Site Construction Representative;
- (v) NOAA FRV-40 Project Engineer;

(d) The Fee Determining Official (FDO) will be either the NOAA FRV-40 Acquisition Manager or the Contracting Officer. The FDO shall determine the award fee, if any, that the contractor will be awarded in accordance with the procedures set forth herein.

(e) For each ship under the contract, the contract performance period will be divided into not more than six evaluation periods of approximately six months duration within a thirty-six month delivery schedule, plus a final seventh evaluation after the end of the guaranty period. These intervals and the number of evaluation periods may be modified by the Government for delivery schedules other than thirty-six months in duration. The Evaluation Board will meet at the close of each evaluation period. The Board will consider evaluations of the Contractor's performance from the Government's on-site team and, as appropriate, from other Government participants in the FRV-40 acquisition. The Contractor may furnish a self-evaluation of its performance for the Board to consider. Additionally, the Board may request information from the SSVs and the Noise Control Engineering Firm regarding the Contractor's performance, and the Board may utilize the services of third party experts for the evaluation of specific technical issues as necessary.

The Board will arrive at a scoring consensus and provide a written recommendation and rationale to the FDO. The Board's recommendation will also be furnished to the Contractor, who will be given five calendar days to provide written comments to the FDO. In the event that the Contractor does not concur with the recommendation, it may present its exception to the FDO. These comments will be considered by the FDO in establishing the earned award fee amount. The FDO shall, within ten days of receipt of any Contractor comments, make the award fee determination (including the amount and rationale for the determination) to be incorporated

into the contract formally via contract modification. Any award fee earned by the Contractor shall be conferred to the Contractor by the execution of a contract modification within thirty (30) days and shall not be subject to any payment withholding percentage, notwithstanding any other provision of this contract.

(f) Determinations of the FDO with respect to the amount of award fee to be paid to the Contractor are final and shall not be subject to the "DISPUTES" clause of this contract, nor shall the Contractor be entitled to submit a claim regarding any such determination under the Contract Disputes Act of 1978 (P.L. 95-563).

(g) Award fee, if funded, will be made available as follows:

<u>Evaluation Period</u>	<u>Award Fee Available</u>	<u>Award Fee Earned</u>
First Period	TBD	TBD
Second Period	TBD	TBD
Third Period	TBD	TBD
Fourth Period	TBD	TBD
Fifth Period	TBD	TBD
Sixth Period	TBD	TBD
End Guaranty	TBD	TBD
TOTAL	TBD	TBD

Unearned award fee for any period will not be made available for any subsequent period.

(h) Performance Ratings.

In evaluating Contractor performance, the following adjectives and numerical ratings will be used:

<u>Adjective Rating</u>	<u>Numerical Value</u>	<u>Criteria</u>
<u>Excellent</u>	<u>96-100</u>	The Contractor's degree of cooperation with the Government, or its effort towards achieving the objectives set forth in paragraph (a) above exceeds the expected level of performance by a substantial margin. While there may be one or more areas for improvement, they are few in number, are minor in terms of potential program impact, and they are far more than offset by outstanding performance in other areas.
<u>Good</u>	<u>85-95</u>	The Contractor's degree of cooperation with the Government, or its effort towards achieving the objectives set forth in paragraph (a) above is above the expected level of performance. Areas requiring improvement may be significant, but are more than offset by higher performance in other areas being evaluated.
<u>Acceptable</u>	<u>76-84</u>	The Contractor's degree of cooperation with the

Government, or its effort towards achieving the objectives set forth in paragraph (a) above meets the expected level of performance. There are areas requiring improved performance; however, these are offset by better performance in other areas.

Marginal **71-75** The Contractor's degree of cooperation with the Government, or its effort towards achieving the objectives set forth in paragraph (a) above is less than the expected level of performance by a substantial margin. Many areas require improvement which are not offset by better performance in other areas.

Unacceptable **70 and below** The Contractor's performance is significantly below the expected level performance in several important areas.

(i) The relationship of the performance rating to the percentage of award fee pool to be paid, will be as follows:

<u>Performance Rating</u>	<u>Percent of Award Fee Pool</u>
0-70:	0
71-100:	$\frac{[(\text{Rating} - 70)]}{[30]} \times 100$

(j) Payment of Award Fee. The Contractor shall be paid earned award fee, if any, upon submission of a proper invoice or voucher.

H-7 PERFORMANCE AND PAYMENT BONDS --Other Than Construction (Sep 1996)

(a) *Definitions.* As used in this clause--

"Contract price" means the total price of Contract Line Item 0001, and if exercised, Items 0008, 0015 and 0022.

(b) The Contractor shall furnish a performance bond (Standard Form 1418) for the protection of the Government in an amount equal to 20 percent of the contract price and a payment bond (Standard Form 1416) in an amount equal to 20 percent of the contract price.

(c) The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within 10 days, but in any event, before starting work.

(d) The Government may require additional performance bond protection when the contract price is increased. The Government may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(e) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the *Federal Register*, or may be obtained from the:

U.S. Department of Treasury
Financial Management Service
Surety Bond Branch
401 14th Street, NW, 2nd Floor, West Wing
Washington, DC 20227

H-8 SINGLE SYSTEM VENDORS AND NOISE CONTROL ENGINEERING FIRM

(a) The Contractor agrees to place and to maintain in force through the life of this contract, subcontracts with the Single System Vendors (SSVs) and the Noise Control Engineering Firm (NCEF) identified in its proposal, and that the contract price includes the prices of these subcontracts. No substitutions shall be made without the written consent of the Contracting Officer. Any requests for substitutions must provide a complete explanation of the circumstances necessitating the proposed substitution. The proposed substitute subcontractor must possess qualifications equivalent to the firm being replaced.

(b) The Contractor agrees to implement the recommendations of the SSVs and the NCEF in all aspects of the design and construction of the vessel(s) under this contract, unless, on a case-by-case basis, the Contractor can demonstrate to the satisfaction of the Contracting Officer that a specific recommendation is erroneous or otherwise cannot reasonably be implemented.